American Federation of Labor and Congress of Industrial Organizations

815 Black Lives Matter Plaza NW
Washington, DC 20006

202-637-5000

aflcio.org

Testimony in Support of S.B. 938: An Act Concerning Unemployment for Striking Workers

Matthew Ginsburg
General Counsel
American Federation of Labor & Congress of Industrial Organizations

mginsburg@aflcio.org

Public Hearing
Labor and Public Employees Committee

February 7, 2023

On behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), I submit this written testimony in support of S.B. 938, An Act Concerning Unemployment Insurance for Striking Workers.

I am General Counsel of the AFL-CIO, and prior to my appointment, I served as an Associate General Counsel at the AFL-CIO for over 12 years and, prior to that, as an attorney at a union-side law firm in Chicago. I also clerked for Judge Diane P. Wood on the United States Court of Appeals for the Seventh Circuit and was a Skadden Fellow at the Chicago Lawyers' Committee for Civil Rights Under the Law. I have practiced in the areas of labor and employment law for over 16 years.

In this testimony, I discuss the importance of unemployment compensation for striking workers which more states are expanding to cover workers who are out of work due to a strike, or have been locked out or permanently replaced. I also address one possible objection to S.B. 938 - that it is preempted by federal law.

A. Recent Legislation Extending Unemployment Insurance Benefits to Strikers

S.B. 938 extends Connecticut's existing unemployment benefits law to provide a vital source of income to workers who lose their wages during a strike, after a two-week waiting period. In recent years, a growing number of states have extended or expanded unemployment benefits to workers who are on strike or are locked out.

For example, in 2018, New Jersey passed S 1046, which made striking workers eligible for unemployment benefits after a 30-day waiting period, including economic strikers and workers striking in protest of an unfair labor practice or due to an employer's breach of a collective bargaining agreement, as well as locked out and permanently replaced workers. In 2020, New York passed SB S7310, which reduced the state's waiting period for strikers to collect unemployment benefits from seven weeks to two weeks.

B. S.B. 938 Is Not Preempted by Federal Labor Law

Opponents may argue that the bill is preempted by federal labor law (specifically, the National Labor Relations Act or NLRA, 29 U.S.C. §§ 151 et seq.). As fully explained below, however, federal labor law does not bar states from using their discretion to determine whether and in what situations workers engaged in a labor dispute may receive unemployment benefits.

The Supreme Court authoritatively addressed the question of whether the NLRA preempts the extension of unemployment benefits to strikers in *N.Y. Telephone Co. v. N.Y. State Dept. of Labor*, 440 U.S. 519 (1979). There, the Court held that New York's provision of unemployment benefits to strikers after seven weeks was not preempted by the NLRA. As the Court explained, when Congress passed the Social Security Act in 1935, it was well aware that unemployment compensation could be extended to strikers. The fact that it passed the Social Security Act and the NLRA within weeks of each other, and that neither statute addresses the question of unemployment benefits for strikers, shows that Congress intended to tolerate some limited intrusion by the states into the collective bargaining process by choosing to provide unemployment benefits to strikers.

Accordingly, states have discretion to decide to extend or restrict unemployment benefits to workers involved in labor disputes. *See Baker v. General Motors Corp.*, 478 U.S. 621 (1986) (holding that Michigan statute that disqualified workers who finance a strike from unemployment benefits was not preempted, as states had freedom to qualify and disqualify workers in this circumstance).

Following the Supreme Court's lead, courts have upheld the provision of unemployment benefits in a number of different situations involving labor disputes. In addition to upholding a provision of benefits to strikers after an extended waiting period, *N.Y. Tel. Co.*, courts have upheld the provision of unemployment benefits to locked out workers, *see, e.g., Duer Spring & Mfg. Co., Inc.,* 906 F.2d 968 (3d Cir. 1990), and ULP strikers, *see, e.g., St. John's Mercy Health Sys. v. Div. of Employment Security*, 273 S.W.3d 510 (Mo. 2009). Courts have also found statutes that require a substantial curtailment of an employer's operation to constitute a work stoppage entitling workers to unemployment benefits were not preempted, even where resolving that issue could overlap with issues presented to the NLRB. *See Constellium Rolled Prods. Ravenswood LLC v. Cooper*, 345 W.Va. 731 (2021).

Accordingly, states have a great deal of discretion in deciding whether and in what situations workers engaged in a labor dispute may receive unemployment benefits. That being said, courts have emphasized that an award of unemployment benefits must not "regulate[] the conduct of the parties in the dispute," even if it "ameliorate[d] the effect on the workers of the dispute to some extent." *Duer Spring*, 906 F.2d at 971. Here, S.B.938 does not punish the employer for its conduct in the labor dispute. The proposed bill simply ensures that workers, when they strike, are not required to sacrifice their basic well-being or that of their families and Connecticut's communities.

For the foregoing reasons, the proposed bill is not preempted by federal labor law, and Connecticut should join the growing list of states that have affirmatively extended unemployment benefits to striking workers.

Respectfully submitted,

/s/ Matthew Ginsburg
Matthew Ginsburg